

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	Case No. CR18-0092-RAJ
)	
Plaintiff,)	
)	DEFENDANTS' REPLY TO
vs.)	GOVERNMENT'S RESPONSE TO
)	MOTION FOR ORDER PREVENTING
BERNARD ROSS HANSEN and)	WITNESS(ES) FROM MAKING
DIANE RENEE ERDMANN,)	PUBLIC STATEMENTS
)	
Defendants.)	

Bernard Ross Hansen, by his counsel, and Diane Erdmann, by her counsel, moved this Court for an order prohibiting the Government and its witness(es) from making public statements regarding this case. Dkt. 39. In its response, the Government contends the motion should be denied because (1) the proposed order is not narrowly drawn; and (2) the motion erroneously assumes that the target of the motion is the United States Attorney's Office as opposed to its witness, the Trustee, Mark Calvert. Dkt. 43.

First, with respect to the proposed order, as the parties discussed prior to filing the motion, the defense intended to narrowly proscribe the order so it is tailored to the issue before the Court and not prescribe an outright ban on the Government's ability to make appropriate press releases as the case moves forward or concludes. Dkt. 39-1 at 2. As it notes, the Government has not

1 attempted to try this case in the press and therefore, that particular issue is not before this Court.
2 What is before the Court, however, is the Government's witness' inappropriate character
3 assassinations of Mr. Hansen under the guise of fulfilling his fiduciary duty as Trustee of the
4 estate. Counsel for Mr. Hansen and Ms. Erdmann are happy to work with the Government to
5 make the proposed order make that fact clearer.
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7 Second, with respect to the actual issue before the Court, the defense opted to summarize
8 examples of Mr. Calvert's actions to support the motion. In response, the Government claims that,
9 other than the May 2017 "Section 341" hearing, there is no evidence of Mr. Calvert making
10 disparaging comments to witnesses. The Government has had the discovery in the case for more
11 than two years and it has had regular contact with Mr. Calvert, and it is abundantly clear that
12 Mr. Calvert is neither a "disinterested"¹ person nor silent since the May 2017 "Section 341"
13 hearing with creditors, former employees and customers and thereby, potential witnesses,
14 regarding his disdain of Mr. Hansen and Ms. Erdman. The defense simply did not anticipate the
15 denial of Mr. Calvert's disdain or derogatory remarks to date and therefore, spared the Court
16 further detail than necessary to decide the motion.
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19 Nevertheless, Mr. Calvert's disdain and attempt to disparage the defendants should not be
20 surprising to anyone paying attention. For example, in his power point during the May creditors'
21 meeting, Mr. Calvert discussed and displayed what he believed to be Mr. Hansen's criminal
22 history and history in bankruptcy court. *See* Exhibit 1 at 14 (power point).² Two pages were
23 dedicated to discussing what the Trustee believed to be the details underlying Mr. Hansen's
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26 ¹ Dkt. 43 at 2.

27 ² It is unclear whether the Trustee showed the power point during the meeting. However, the tape recording
28 of the Trustee's statements during this meeting mirror his power point. The tape recording was not filed
with this motion in the interests of judicial economy. However, if the Court would indeed want a copy of
the hearing before ruling on the motion, the defense is happy to provide one to the Court.

1 arrests and the criminal charges. *Id.* at 15-16. After making clear the Trustee took, as one of his
 2 first steps, removing Mr. Hansen, *id.* at 18, he made clear to the creditors he was cooperating with
 3 the FBI, *id.* at 19, believed a fraud had indeed occurred, even though “the professional ethics of
 4 being a CFE will not allow me to state there is a “Fraud,” *id.* at 20, and concluded, in bold, that
 5 “the bullion sale operations have attributes of a Ponzi scheme” *id.* at 22 (emphasis in original),
 6 and then described how a Ponzi Scheme is defined by the Security and Exchange Commission,
 7 involves “fraudsters” and DOJ and FBI were investigating the case. *Id.* at 24-25.

9 There is no reason to believe that the derogatory remarks have waned. For example, in
 10 October 2017, the Trustee filed with the bankruptcy court and publicly posted on the public
 11 website “existingbullionorders.com” a status report in which the Trustee made clear to the
 12 thousands of creditors of the Mint and the public that, *inter alia*, he believed Mr. Hansen and
 13 Ms. Erdman operated their business in a “Ponzi like fashion,” that Mr. Hansen had “maliciously
 14 defamed a former landlord,” that Ms. Erdmann lied under oath about her assets and in fact, had
 15 liquidated “significant quantities of precious metals through coin dealers to fund payments to
 16 attorneys,” and stole “large bags of materials from the precious metal vaults” of the Mint. *See*
 17 Trustee’s Report of Investigation and Status Report at 1-2, 8-10, available at
 18 <http://existingbullionorders.com/reports/201710-investigation-and-status-report.pdf>. Indeed, a
 19 year before the above-referenced report, the Trustee asserted the money the defendants used to
 20 pay their attorneys belonged to the estate and the attorneys should be ordered to give the retainer
 21 to the estate. However, following an evidentiary hearing, The Honorable Judge Alston determined
 22 that the Trustee had not proven that the funds paid to the law firm were traceable to the any funds
 23 reportedly stolen from the Mint. *In re: Northwest Territorial Mint*, Case No. 16-11767-CMA,
 24 Dkt. 58 (Memorandum Opinion and Further Order on Motion for Authority to Withdraw as
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1 Attorney for the Debtor), at 12-13. In March 2018, the Trustee made clear that he would avoid
 2 selling any of the Mint's assets to anyone connected with Mr. Hansen. *See* Exhibit 2 at 1 (March
 3 19, 2018 email). And there is no reason to believe the Trustee's tone with the creditors and
 4 potential witnesses' about Ms. Erdmann or Mr. Hansen has changed. *See, e.g.,* Exhibit 2 at 2
 5 (July 11, 2017 email telling customer and cc'ing employees that this is a Ponzi scheme).
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7 Moreover, contrary to the Government's description, Mr. Calvert is not a "disinterested"
 8 person in the outcome of this case. Indeed, prior to the appointment in April 2016, Mr. Calvert
 9 was consulted as an expert by Mr. Hansen's attorney for assistance in resolving the Mint's
 10 operations and financial issues before Mr. Calvert readily accepted the appointment as Trustee
 11 and removed Mr. Hansen and Ms. Erdmann from its operation. Thereafter he has repeatedly
 12 touted himself as an investigator, *see, e.g., In re: Northwest Territorial Mint*, Case No. 16-11767-
 13 CMA, Dkt. 1202 (Trustee invoice detailing work performed and filed 9/15/2017); obtained
 14 records for the Federal Bureau of Investigations, *see, e.g.,* Exhibit 2 at 3 (October 17, 2016 email);
 15 and also made clear that, from his perspective, he had an integral role with the investigation. *See,*
 16 *e.g.,* Exhibit 2 at 4 (February 24, 2017 email asking if the FBI could move "a little quicker...!!!");
 17 *see also, e.g.,* Exhibit 2 at 5 (February 20, 2018 email advising agents on who to interview about
 18 what subjects); and Exhibit 2 at 3 (October 17, 2016 email advising the federal agent that in his
 19 opinion, "this is a Ponzi... which I believe it is. . . and my analysis say it has attributes of a
 20 Ponzi").³
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24 As of today's date, the bankruptcy proceedings remain pending. *In re Northwest*
 25 *Territorial Mint, LLC*, Case No. 16-11767CMA, Docket. Accordingly, undoubtedly the Trustee's
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27 ³ For these same reasons, it is actually disingenuous of the Trustee's attorney to contend the Trustee has
 28 done nothing but respond to subpoena requests rather than work in concert with the Government in its
 investigation.

1 contact with the creditors and employees, and, thereby, witnesses in this case, will continue. In
 2 the interests of justice, the Trustee's communications – both public and private with the creditors
 3 and alleged victims -- should be curtailed so as to avoid any further impact on the witnesses and
 4 thus a fair trial.

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 6 In sum, the Government's objections to a narrowly proscribed gag order should be
 7 rejected. For the reasons stated herein and in the motion, in the interests of justice and Mr. Hansen
 8 and Ms. Erdmann's rights to a fair trial, the Trustee, who has acted akin to an "agent" of the
 9 Government, and who, regardless of label no doubt would describe himself as instrumental to the
 10 Government's case, with ready access and control over records relevant to the investigation and
 11 prosecution over the past two years, should be precluded from making any further disparaging
 12 remarks about Mr. Hansen or Ms. Erdmann publicly or to potential witnesses under the auspices
 13 of exercising his fiduciary duty as "Trustee."

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 15 At a minimum, the Trustee should be directed to avoid gratuitous and untoward
 16 accusations against Ms. Erdmann and Mr. Hansen moving forward.

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 18 Respectfully submitted this 28th day of September, 2018.

19 s/ Jennifer E. Wellman

20 s/ Dennis P. Carroll

21 Attorneys for Bernard Ross Hansen

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Certificate of Service

I certify that on September 28, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to counsel for other parties of record.

s/ Suzie Strait
Paralegal